1889.

SUPREME COURT OF THE UNITED STATES.

No. 100.

ARTHUR SPEAR, CLAIMANT OF THE SCHOONER LUCY ANN AND CARGO, APPELLANT,

vs.

HENRY PLACE, LIBELLANT, &c., FOR HIMSELF AND OTHERS.

APPEAL FROM THE DISTRICT COURT U. S. FOR TEXAS.

INDEX.

	Original.	Print.
Libel and complaint	1	2
Order of judge granting writ of seizure	5	4
Writ and marshal's return	5	5
Monition and marshal's return	8	5
Claim and answer of Spear	9	6
Bond	12	9
Appraisement of schooner and cargo	13	10
Decree of district court	18	13
Appeal prayed and allowed	20	14
Orders of court	20	14
Statement of facts	20	15
Protest to statement of facts	33	22
Appeal bond	37	25
Clerk's certificate	38	25

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THE UNITED STATES OF AMERICA,
District of Texas, to wit:

At a district court of the United States for the district of Texas, appointed by the honorable John C. Watrous, judge of the said court, held at the city of Galveston on the day of December, in the year of our Lord one thousand eight hundred and forty-eight:

Present, the honorable John C. Watrous, judge of the said court, James H. Cocke, marshal of the district of Texas, and James Love, clerk.

Among other were the following proceedings, to wit:

HENRY PLACE et al.
vs.
The schooner LUCY ANN and cargo.

UNITED STATES OF AMERICA,
District of Texas.

Be it remembered, that heretofore, to wit, on the 22d day of December, A. D. 1848, came Henry Place and others, by their solicitors, into said district here, and exhibited in said court their libel and complaint against the schooner Lucy Ann and cargo, in the words and figures following, to wit:

To the honorable John C. Watrous, judge of the district court of the United States, within and for the district of Texas.

The libel and complaint of Henry Place, of New Orleans, in the State of Louisiana, master of the steamship Globe, as well for himself as for Charles Morgan and John T. Wright, of the city and State of New York, and Henry Morgan and C. Harris, of the city of New Orleans, in the State of Louisiana, the owners of said steamship, against the schooner Lucy Ann, (whereof Spear now is, or late was, master,) her tackle, apparel, and furniture, and all and singular the goods, wares, and merchandise, now or late on board of said schooner, in a cause of salvage, civil and maritime.

And thereupon the said Henry Place, and the said owners of said steamship, allege, and articulately propound, as follows:

First. That on Monday, the 18th day of December, in the year of our Lord one thousand eight hundred and forty-eight, the said steamship Globe, of the burthen of four hundred and eighty tons, or thereabouts, and of the value of fifty-three thousand dollars, or thereabouts, and whereof said Henry Place then was master, and said Charles Morgan, John T. Wright, Henry Morgan, and C. Harris, owners, was on a voyage from the port of Galveston, in the district aforesaid, to a port or place called Port Lavacca, in the said district, and that said steamship was manned with a crew of twenty-eight men, exclusive of

said Henry Place, and fully and completely equipped for said voyage.

Second. That between three and four o'clock in the afternoon of the day aforesaid, said steamship then being in the prosecution of her aforesaid voyage, and being in the neighborhood of the bar at the entrance of the port of Galveston from the Gulf of Mexico, in said district of Texas, the said Henry Place, master of said steamship, as aforesaid, descried a vessel in distress, upon what is known and called the North breakers on said Galveston bar, (there being at that time a dense fog;) that said Henry Place, with said steamship and crew, made for said vessel in distress, and in a short time came near to her, in order to render her every possible assistance; that said Henry Place found said vessel to be aground on the said breakers; that she was thumping heavily on the ground; that her anchors and chains were all gone; that she was laden with a valuable cargo, bound from the port of New Orleans to said port of Galveston; and that said vessel was, and is, the very vessel proceeded against in this cause, to wit, said schooner Lucy Ann.

Third. That said schooner Lucy Ann was then and there in a very dangerous situation, and in great danger of being lost; and that the master of said schooner, (said Spear,) begged or requested said Henry Place that he, with his said steamship and crew, would assist and preserve the said schooner and cargo, or to that effect; that said Henry Place, with his said steamship and crew, immediately set about using his best endeavors to preserve said schooner and cargo, and the master and other persons on board said schooner.

Fourth. That said Henry Place, with his said crew, made said steamship fast to said schooner, and by their strenuous efforts and untiring exertions, and with great peril to the safety of said steamship and her cargo, succeeded, before eight o'clock of the afternoon aforesaid, in extricating said schooner, with her cargo, master, and crew, from the perilous situation in which the same was found, as aforesaid; and that said Henry Place, with his said steamship, and at the request of the master of said schooner, towed said schooner, with her said cargo, into said port of Galveston, where she was safe and out of all danger, and where said schooner and cargo now is; the same being in the district of Texas aforesaid, and within the jurisdiction of this honorable court.

Fifth. That at the time of rendering said services, as aforesaid, said services were rendered at the risk of the loss of said steamship; that, without the assistance herein before pleaded, said schooner and cargo could not have been saved, for that said schooner was in a condition where she was exposed to the violent storms of the ocean, to the rolling of the waves, and where she must have soon broken to pieces, and, together with her said cargo, have been a total loss.

Sixth. That said Henry Place, the said *owner* of said steamship, and the crew thereof, by reason of the risk and hazard they ran, and the service they performed, in saving the said schooner and her cargo, deserve, and are justly entitled to, meet and competent salvage for such service, and to so much as is right and proper to be allowed by this court to persons doing and performing the like service, together with all charges and expenses attending the same.

Seventh. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this honorable court; in verification whereof, if denied, the libellant craves leave to refer to the depositions and other proofs to be by him exhibited in this cause.

Wherefore the libellant prays that process, in due form of law, according to the course of courts of admiralty, and of this honorable court in causes of admiralty and maritime jurisdiction, may issue against the said schooner, her tackle, apparel, and furniture, and against the cargo laden therein, wheresoever the same shall be found; and that all persons having, or pretending to have, any right, title, or interest in the said schooner and cargo, may be cited to appear, and answer all and singular the matters so articulately propounded; and that this honorable court would be pleased to decree such a sum of money, or proportion of the value of said schooner and her cargo, to be due to the libellants, as a compensation for their said salvage services, as shall seem meet and reasonable, together with their expenses in this behalf sustained, and to condemn the said schooner, her tackle, apparel, and furniture, and the cargo laden therein, and all persons intervening for their interest in said schooner and cargo, in costs;and otherwise right and justice to administer in the premises.

HENRY PLACE,
For himself, and for Chs. Morgan, John T. Wright, Henry Morgan, and C. Harris, owners of the steamship Globe.

F. H. MERRIMAN,
POTTER & POTTER,
Proctors pro libellants.

I, James Love, clerk U. S. district court, for the district of Texas, certify that this libel of Henry Place was this day subscribed and sworn to by him in open court.

JAMES LOVE, *Clerk.*

December 22d, 1848.

DISTRICT OF TEXAS, *ss.*

The clerk of the United States district court for the district of Texas, will issue process according to the prayer of the foregoing libel and complaint, and in accordance with the course of this court in causes in admiralty and maritime jurisdiction, returnable on the 18th day of January, A. D. 1849. Let publication of the monition be made by publishing the same, for at least fifteen days before the said return day, in the Civilian and Galveston Gazette, a paper printed and published in the city of Galveston, district aforesaid, and by posting a copy of said monition at the court-house of this court, and also by serving said Spear, master of the schooner Lucy Ann, with a copy of said monition, if he be found in said district; and let a writ of seizure forthwith issue against said schooner, her tackle, apparel, and furniture, and the goods, wares, and merchandise, now or late laden therein, wheresoever the same may be found.

JOHN C. WATROUS, *U. S. Judge.*

22d December, 1848.

And thereupon the following writs of seizure and monition were issued, to wit:

THE UNITED STATES OF AMERICA,
District of Texas.

The President of the United States, to the marshal of the district aforesaid, or any of his deputies, greeting:

We command you to seize and take into your possession the schooner Lucy Ann, her tackle, apparel, and furniture, and the goods, wares, and merchandise, now or late laden in and upon her, wherever the same may be found libelled, this day, the 22d day of December, 1848, in a cause of salvage, in the district court for the district aforesaid, before the honorable John C. Watrous, judge of said court, by Henry Place, of New Orleans, in the State of Louisiana, master of the steamship Globe, as well for himself as for Charles Morgan and John T. Wright, of the city and State of New York, and Henry Morgan and C. Harris, of the city of New Orleans, and State of Louisiana, the owners of the said steamship Globe; and what you do in the premises you will duly certify to the honorable the said district court for the district aforesaid, at a term thereof, (which is now in session) and will be continued to and held on the 18th day of January next.

Witness the honorable John C. Watrous, judge of the said court, with the seal of said court, this 22d day of December, A. D. 1848, and seventy-third of American independence.
[SEAL.]

Issued 22d December, 1848. JAMES LOVE, *Clerk.*

Marshal's return on writ.

Received this writ the 22d day of December, 1848, and executed the same day by seizing the schooner Lucy Ann, her tackle, apparel, and furniture; and on the same day seized certain goods, wares, and merchandise as per bills, and bills of lading hereto attached, and No. 1, 2, 3, 4, 5, 6, 7, as furnished by the owners and consignees of said goods, which said goods I left in the possession of the consignees, first taking their receipts to be delivered when called for.

JAMES H. COCKE, *Marshal,*
By H. B. MARTIN, *D. Marshal.*

Monition.

THE UNITED STATES OF AMERICA,
District of Texas, to wit:

The President of the United States of America, to the marshal of the district aforesaid, or any of his deputies, greeting:

Whereas a libel hath been filed in the district court of the United States for the district aforesaid, on this day, the 22d day of December, A. D. 1848, by Henry Place, of New Orleans, in the State of Louisiana, master of the steamship Globe, as well for himself as for Charles Morgan and John T. Wright, of the city and State of New York, and Henry Morgan and C. Harris, of the city of New Orleans and State of Louisi-

ana, the owners of the said steamship, against the schooner Lucy Ann, (whereof Spear, now is, or late was, the master,) her tackle, apparel, and furniture, and all and singular the goods, wares, and merchandise, now or late on board of said schooner, in a cause of salvage, for reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made; and that all persons interested in the said schooner Lucy Ann, her tackle, apparel, and furniture, and in the said goods, wares, and merchandise, may be cited, in general and special, to answer the premises, and all due proceedings being had that said schooner Lucy Ann, her tackle, apparel, and furniture, and the goods, wares, and merchandise aforesaid may be condemned and subjected to salvage for the reasons in said libel set forth according to law; you are therefore hereby commanded to give due notice to all persons claiming the said schooner Lucy Ann, her tackle, furniture, and apparel, and the goods, wares, and merchandise aforesaid, or knowing or having any thing to say why the same should not be condemned and subjected, as aforesaid, according to the prayer of said libel, that they be and appear before said court, to be held in and for said district, at the court-room, in the city of Galveston, before the judge thereof, on the 18th day of January next, at ten o'clock, a. m., of said day. The said notice to be given by publication of this monition, for at least fifteen days before the return day aforesaid, in the Civilian and Galveston Gazette, a newspaper printed in the city of Galveston, in the district aforesaid, and by posting a copy of said monition at and upon the court-house door of said court; and you are also commanded in like manner, and for like purpose, to give notice to said Spear, the said master of said schooner Lucy Ann, if to be found in your district, by service of a copy upon him of this monition. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the honorable John C. Watrous, judge of said court, under the seal of said court, at Galveston, this 22d day of December, A. D. 1848, and 73d of American independence.

[SEAL.]

JAMES LOVE, *Clerk.*

Issued 22d December, 1848, to 18th January, 1849.

Marshal's return.

Received 22d December, 1848, and executed same day.

JAMES H. COCKE, *Marshal.*
By H. B. MARTIN, *D. Marshal.*

And afterwards, to wit, on the 29th day of December, A. D. 1848, came Arthur Spear, by his proctors, and filed his claim and answer in the words and figures following, to wit:

UNITED STATES OF AMERICA, *district of Texas.*

To the honorable John C. Watrous, judge of the district court of the United States within and for the district of Texas.

And Arthur Spear, of the State of Maine, intervening for his interest

in the schooner Lucy Ann, as well as for the other owners of said schooner, and for the owners and consignees of the cargo thereof, and for all whom it may concern; this respondent, the said Arthur Spear, being master of said schooner, and also owner of an interest of about one-fourth therein, appears before this honorable court, and claims the said schooner and her said cargo; and for answer to the libel and complaint of Henry Place, of New Orleans, in the State of Louisiana, against the schooner Lucy Ann, her tackle, apparel, and furniture, and all and singular the goods, wares, and merchandises now or late on board of said schooner, in a cause of salvage, civil and maritime, alleges and articulately propounds, as follows:

First. That this respondent does not know whether the allegations contained in the first article of said libel are true or not; but he conceives himself authorized to deny, and accordingly denies, the matters all and singular therein set forth, for the purpose of calling forth proof touching the same.

Second. That the respondent admits all and singular the matters alleged in the second article to be true, except this, that he denies that the anchors of the said schooner were all gone, and on the contrary alleges that she had an anchor then on board, and that she had lost none of her anchors when this respondent was first hailed by Captain Place.

Third. The respondent denies that the said schooner Lucy Ann was then and there in great danger of being lost, although he then thought that she was running a considerable risk; on the contrary, the respondent alleges that the said schooner lay to the south or southwest of the north breakers, and was very near to and was beating over into the channel leading into the port of Galveston. Respondent further alleges that, at the time said steamship Globe came to his assistance, he had greatly lightened the said schooner by throwing overboard her deck-load, and was proceeding to lighten her still further; by means whereof, and of his nearness to the channel, and by means also of the said schooner beating towards the channel, he has since learned that she would have gotten off with little if any further loss. The respondent denies that he begged or requested the said Henry Place that he, with his steamship and crew, would assist and preserve the said schooner and her cargo, or to that effect; and on the contrary alleges that he only hung out the usual signal of distress, in ignorance of the facts hereinbefore in this article alleged, and when spoken to by the said Henry Place replied that "he wanted assistance."

Fourth. That it is true that the said Henry Place made the said steamship fast to the said schooner and towed her into said port of Galveston; but this respondent denies that he did so at great peril to the safety of said steamship. The respondent alleges that the said steamship did not approach near enough to render any assistance to said schooner until he was told by one of the pilots of the port of Galveston that he ran no risk whatever in doing so; and, even after being so informed by said pilot, that the said Henry Place only came near enough

to enable the boat of the said schooner to take a strong halser from the said steamship Globe and carry it to said schooner; and the respondent alleges that said halser, so brought on board of said schooner by her own crew, was made fast to said schooner, and that by means thereof she was towed into the said port without risk to said steamship, and with a delay of not more than three hours. The respondent alleges that he never was boarded by the captain or by any of the crew of said steamship; and that he has since been informed, and verily believes, from the information of persons well acquainted with the port of Galveston, that the said steamship did not incur any risk or hazard whatever in rendering assistance to said schooner; and that the said Henry Place is of right only entitled to his reasonable towage from this respondent, and to no more; and that he is not in anywise entitled to salvage.

Fifth. The respondent denies all and singular the allegations in the fifth article contained; on the contrary he alleges, that had the said steamship never come to his assistance, that he would not have lost the said schooner and her cargo, but that she was then beating over, and would soon have beaten into the channel.

Sixth. That said Henry Place, with his said steamship, having incurred no risk, and not having lost more than three hours from the voyage on which he was proceeding, when he saw the signal of distress of said schooner, is not entitled to any salvage, but at most only to a reasonable compensation for towage, for towing the said schooner with his said steamship into the port, and to no more.

Seventh. That all and singular the premises are true; in verification whereof, if denied, the respondent craves leave to refer to the depositions and other proofs to be by him exhibited in the cause.

Wherefore the respondent prays that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellants into costs, and otherwise right and justice to administer in the premises.

ARTHUR SPEAR.

UNITED STATES OF AMERICA,
District of Texas.

Personally appeared before me, Arthur Spear, who being sworn saith, that the allegations set forth in the foregoing answer and claim are true; the interlineation and erasure at the foot of the first page [were] made before swearing hereof.

ARTHUR SPEAR,
McQUEEN, AUSTIN,
ALEXANDER, & ATCHISON,
Proctors for respondent, Arthur Spear.

Sworn to and subscribed before me, this 29th December, 1848.

A. M. HUGHES,
Commissioner.

And said respondent, Arthur Spear, on the 29th day of December, A. D. 1848, gave the following bond, to wit:

UNITED STATES OF AMERICA,
District of Texas.

Know all men by these presents, that we, Arthur Spear, Charles W. Adams, and John H. Bennett, are held and firmly bound unto Henry Place, Charles Morgan, and John T. Wright, Henry Morgan, and C. Harris, in the sum of three hundred dollars, to be paid to the said Henry Place, Charles Morgan, John T. Right, Henry Morgan, and C. Harris, their heirs and assigns; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the twenty-ninth day of December, in the year of our Lord one thousand eight hundred and forty-eight.

Whereas a libel has been filed in the district court of the United States of America, for the district of Texas, on the twenty-second day of December, in the year of our Lord one thousand eight hundred and forty-eight, by said Henry Place, on behalf of himself and the other above named obligees, against the schooner Lucy Ann, her tackle, apparel, and furniture, and all and singular the goods, wares, and merchandise, now or late on board said schooner, in a cause of salvage, civil and maritime, for reasons and causes in said libel mentioned. And whereas the said Arthur Spear hath intervened for his interest in said schooner, as well as for the other owners of said schooner, and for the owners and consignees of the cargo thereof, and all whom it may concern: Now, therefore, the condition of this obligation is such, that in case the said Arthur Spear pay all costs and expenses which shall be awarded against him by the final decree of said court, or upon an appeal by the appellate court, then this obligation to be null and void, and otherwise to remain in full force and virtue.

ARTHUR SPEAR, [SEAL.]
C. W. ADAMS, [SEAL.]
JNO. H. BENNETT, [SEAL.]

Teste: JOHN C. WATROUS.

And afterwards, to wit, on the 3d day of January, A. D. 1849, the following order was made, to wit:

This day came the parties aforesaid by their proctors, and upon motion and with their consent, it is ordered, that Norman Hurd and E. P. Hunt be, and they are hereby, appointed appraisers of the schooner Lucy Ann, her tackle, apparel, and furniture, and the cargo thereof libelled in this cause, and the said appraisers are hereby directed to make an appraisement of the same, and report with all convenient despatch.

And thereupon, afterwards, to wit, on the 16th January, A. D. 1849, said appraisers filed their appraisement of the cargo of said schooner, which is in the words and figures following, to wit:

HENRY PLACE et al.
vs. } In admiralty.
THE SCHOONER LUCY ANN and cargo.

Appraisement of the cargo of schooner Lucy Ann, libelled in the above entitled cause.

J. S. Vedder, consignee.

Amount	Stark, Day, Stauffer & Co., bill merchandise	$362 56	
"	Thos. Medly & Co., bill dry goods	1,755 35	
"	E. J. Hart & Co., bill groceries	314 41	
"	C. A. Townsend & Co., bill dry goods	86 50	
"	Taylor & Rayne, bill shoes, &c	301 22	
"	Taylor & Hadden, bill clothing	686 25	
"	R. G. Hobbs, bill boots and shoes	1,398 60	
"	C. Yale, jr., & Co., bill dry goods	659 80	
"	Freight bill for the above merchandise	43 75	
"	1¼ per ct. insurance on $5,564 69	69 56	
			$5,678 00

J. K. Brown, consignee.

"	Invoice 5 boxes claret	83 97	
"	Freight on same	7 88	
"	1¼ per ct. insurance	1 04	
			92 89

Penny & Flint, consignees.

"	E. J. Hart & Co., bill whiskey and flour	91 72	
"	Freight on same	7 56	
"	1¼ per ct. insurance	1 14	
			100 42

Penny & Flint, consignees, for account Leyles & Co.

Amount	E. J. Hart & Co., invoice paint cups	5 43	
"	Freight on same	58	
"	1¼ per ct. insurance	06	6 07
Amount	carried forward		$5,877 38
Amount	brought forward		5,877 38

Synor and Bone, consignees.

Amount	Stark, Day, Stauffer & Co., invoice merchandise	$155 67		
"	Wheeler & Blake, invoice assorted, Day	407 62		
"	R. G. Hobbs, invoice boots, shoes, and hats	1,341 55		
"	Thos. Medley & Co., invoice dry goods	2,690 08		
"	Morphey & Nevins, invoice groceries	636 54		
"	Robert Kerr, invoice groceries, Day	1,377 48		
"	J. McGregor & Co., invoice hams	815 34		
"	A. Cosier, invoice 54 bbls. onions	71 10		
"	Parish & Norman, invoice tobacco	57 60		
"	L. Fazoini, invoice fruit	25 00		
"	Dalhn & Auch, invoice Bran	27 75		
"	E. J. Hart & Co., invoice groceries	1,211 43		
"	E. J. Hart & Co., invoice do.	162 38		
"	Cash, invoice coffee, &c	142 91		
	Total amount	9,122 55		
Less amount of goods *Gitisoned*		383 98		
			$8,738 57	
Freight on same			265 55	
1¼ per ct. insurance			109 22	
				$9,113 34

(S.) *Rice, Adams & Co., consignee, account Sampson & Co.*

Amount E. J. Hart & Co., invoice groceries	$585 10	
Freight on same	22 80	
1¼ per ct. insurance	7 31	
		$615 21

[II.] *Rice, Adams & Co., assignee.*

Amount Wingate & Brennan, invoice hams, flour, &c.	$2,105 27	
" E. J. Hart & Co., invoice rope, bagging, &c.	2,168 72	
" Freight on same	238 70	
" 1¼ per ct. insurance	53 42	4,566 11
Amount carried forward		$20,172 04
Amount brought forward		20,172 04

(R. & A.) *Rice, Adams & Co., consignees for account Rice & Nichols. No invoice furnished appraisers.*

50 boxes wine, a $1 90	$95 00	
1 bbl. rum	30 00	
20 bags coffee, 3300 lbs. a 5¾	189 75	
20 coils rope 2762 lbs. a 8	220 96	
20 bbls. flour, a $5	100 00	
10 coils rope, 1382 lbs. a 8c.	110 56	
20 ps. bagging, 2000 yards a 17c.	340 00	
Drayage	3 25	
Freight on same	50 56	
1¼ per ct. insurance	13 61	$1,153 69
Total amount		$21,325 73

Recapitulation.

HENRY PLACE et al.
vs.
The SCHOONER LUCY ANN and cargo. } In admiralty.

Appraisement of the cargo of the schooner Lucy Ann, Arthur Spear, master, libelled in the above entitled cause, in and by virtue of an order issued out of the United States district court for the district of Texas, bearing date the 3d day of January, A. D. 1849.

Amount of merchandise consigned J. S. Vedder, as per invoices furnished appraisers -	$5,564 69	
Freight on same - - - - - -	43 75	
1¼ per cent. insurance on amount of invoices	69 56	
		$5,698 00
Am't of merchandise consigned J. K. Brown	83 97	
Freight on same - - - - -	7 88	
1¼ per cent. insurance - - - - -	1 04	
		92 89
Amount of merchandise consigned Perry & Flint - - - - - - - -	91 72	
Freight on same - - - - -	7 56	
1¼ per cent. insurance - - - -	1 14	
		100 42

Amount of merchandise consigned Perry & Flint for account Leyles & Co. - -	$5 43	
Freight on same - - - - - -	58	
1¼ per cent. insurance - - - - -	06	
		$6 07
Amount of merchandise consigned Sydnor & Bone - - - - - - - -	8,738 57	
Freight on same - - - - - -	265 55	
1¼ per cent. insurance - - - - -	109 22	
		9,113 34
Amount of merchandise consigned Rice, Adams & Co., for account Sampson & Co. -	585 10	
Freight on same - - - - - -	22 80	
1¼ per cent. insurance - - - - -	7 31	
		615 21
Amount carried forward - - - - -	- -	$15,605 93
Amount brought forward - - - - -	- -	15,605 93
Amount of merchandise consigned Rice, Adams & Co. for their own account - -	4,273 99	
Freight on same - - - - - -	238 70	
1¼ per cent. insurance - - - - -	53 42	
		4,566 11
Amount of merchandise consigned Rice, Adams & Co. for account Rice & Nichols -	1,089 52	
Freight on same - - - - - -	50 56	
1¼ per cent. insurance - - - - -	13 61	
		1,153 69
Total - - - - - - - - - -		$21,325 73

The foregoing is a true and just appraisement of the cargo of the schooner Lucy Ann, according to the best information we have been able to obtain from the examination of the invoices of the same, furnished us by the consignees, and from the state of this market at this time, according to our best judgment.

Galveston, January 16th, 1849.

N. HURD,
E. P. HUNT.

Subscribed and sworn to, before me, this 16th January, 1849.

A. M. HUGHES,
Commissioner.

By the auctioneers' account [of] sales, furnished us, it appears that there has been a further loss by damage of goods belonging to Sydnor & Bone's invoice of the sum of one hundred and two $\frac{04}{100}$ dollars, which we were not informed of previous to the foregoing return being made.

E. P. HUNT.
N. HURD.

Subscribed and sworn to before me, this 31st January, A. D. 1849.

A. M. HUGHES,
Deputy Clerk.

And said appraisers made their report of the appraisement of the schooner Lucy Ann, which is in the words and fixures following, to wit:

HENRY PLACE et al.
vs.
The SCHOONER LUCY ANN and cargo. } In Admiralty.

The undersigned, appraisers appointed to appraise the schooner Lucy Ann and cargo, do report, that after a careful examination of the schooner Lucy Ann, her tackel, apparel, and furniture, we do appraise her cash value, as she now lays in this port, at twenty-six hundred dollars.

Given under our hands, at the city of Galveston, this eighth day of January, eighteen hundred and forty-nine.

N. HURD,
E. P. HUNT.

Sworn to and subscribed before me, this 8th day of January, A. D. 1849.

A. M. HUGHES,
Commissioner.

And afterwards the following decree was rendered on the 30th day of January, 1849:

HENRY PLACE and owners of steam ship Globe
vs.
SCHOONER LUCY ANN and cargo.

United States district court.

This cause having been heard by the court upon the pleadings and proofs, and the court being now sufficiently advised in the premises, and it appearing to the satisfaction of the court that the schooner Lucy Ann and cargo, now before the court, libelled against in this cause, is of the value of twenty-three thousand nine hundred and twenty-five $\frac{73}{100}$ dollars, to wit, said schooner being of the value of twenty-six hundred dollars, and said cargo of the value of twenty-one thousand three [and] twenty-five $\frac{73}{100}$ dollars, and the same was, on the 18th day of December, 1848, saved from entire loss and destruction by means of assistance rendered by the steamship Globe, whereof Henry Place was master, and Charles Morgan, John T. Wright, Henry Morgan, and C. Harris, owners; it is therefore ordered, adjudged, and decreed by the court that the libellants, Henry Place, Charles Morgan, John T. Wright, Henry Morgan and C. Harris, have and recover in full satisfaction for their salvage the one-fifth part of the aforesaid gross amount of the aforesaid value of said schooner and cargo, to wit, the sum of four thousand seven hundred and eighty-five $\frac{14}{100}$ dollars, and that said schooner and cargo be, and the same are hereby, charged with and subjected to the payment of said amount of salvage; the said schooner to be charged with the payment of the sum of five hundred and twenty

dollars thereof, and the said cargo to be charged with the payment of the sum of four thousand two hundred and sixty-five $\frac{14}{100}$ dollars thereof. And it is further ordered, adjudged, and decreed, that said schooner Lucy Ann, her tackel, apparel, and furniture, be condemned, and that the same be sold by the marshal of this district for the payment of said sum of five hundred and twenty dollars so assessed thereon as aforesaid, and that said cargo be condemned, and that the same be sold by the marshal of this district, for the payment of said sum of four thousand two hundred sixty-five $\frac{14}{100}$ dollars so assessed as aforesaid, and that the proceeds of said schooner and cargo be brought into court to abide the further order of this court herein. And it is further ordered, adjudged, and decreed, that said sales take place on the 24th day of February, 1849, after giving ten days notice of the time and place of sale, and that all costs and charges in this cause be taxed upon and paid out of the balance of the proceeds of said schooner and cargo after the payment of the aforesaid amount of salvage, unless Arthur Speare, the respondent, shall immediately pay the same into court.

By agreement of the libellants in this cause, by their proctors, made in open court, it is ordered, adjudged, and decreed by the court, that the sum of four thousand seven hundred and eighty five, $\frac{14}{100}$ dollars decreed to be paid to the libellants in said cause be distributed, apportioned, and paid to the libellants in proportions as follows, to wit, to Henry Place, the master of the steamship Globe, the sum of two hundred and fifty dollars, and to Charles Morgan, John T. Wright, Henry Morgan, and C. Harris, the owners of the steam ship Globe, the sum of four thousand five hundred and thirty-five $\frac{14}{100}$ dollars.

And afterwards, to wit, on the 27th January, A. D. 1849, the following order was made, to wit:

The claimant herein, being dissatisfied with the sentence and decree of the court herein, prayed an appeal to the next term of the Supreme Court of the United States, which is granted him upon his entering into an appeal or stipulation bond within fifteen days, to be approved by the court if in session, or by the judge in vacation.

And afterwards, to wit, on the 8th February, A. D. 1849, the following order was made, to wit:

Upon motion of claimant by his proctor, it is ordered, that upon paying into court the amount decreed for salvage and the costs of this cause, the marshal shall release unto said claimant the schooner and her cargo libelled herein.

And afterwards, to wit, on the 12th day of February, A. D. 1849, the following order was made, to wit:

This day came the parties by their proctors, and on motion of claimant by his proctors, it is ordered by the court that he have leave, until the 28th February, to collate the testimony herein.

And thereupon afterwards, to wit, on the 27th February, A. D. 1849, the following statement of facts was filed, to wit:

United States district court, district of Texas.

HENRY PLACE et al.
vs.
SCHOONER LUCY ANN.

Testimony for Libellants.

Edward Bena, sworn. I am mate of the steamer Globe; was aboard of her on the 18th December ult., when she left Galveston on her way to Port Lavacca; she left the wharf between three and four o'clock, p. m.; the weather was foggy; saw a vessel outside on the north breaker; we ran down to her, rounded to, and asked what she wanted? The captain of schooner replied, he wanted assistance. Capt. Place asked if they had a halser; answered yes, but thought it was not sufficient; Capt. Place told them to send it aboard; they fetched us their halser and we made it fast; Globe then went ahead, slewed the schooner around, and the halser parted; we then passed our own halser over our stern into the boat of the schooner; after they had taken it and made it fast to the schooner, Capt. Place asked if the schooner had any anchors out; they replied yes, but their chain and cable were parted; the Globe then went ahead, and after towing the schooner into deep water, Capt. Place asked capt. of schooner whether he wanted any thing more; capt. of schooner answered that he wished to be towed into port.

Schooner had a signal of distress flying; was aground when we came up; Capt. Place asked how much water schooner was drawing; capt. of schooner answered ten feet, by the lead we had nine feet scant; I attended the lead all the time until we got inside of the harbor again; we approached within 160 or 180 feet of the schooner; the water shoals rapidly, that is, I think it does; we succeeded in getting the schooner off and towing her into Galveston harbor; there was a heavy swell of the sea at the time, and it was very foggy; schooner was about one-fourth of a mile off when we first descried her; she lay on the outside of the north breaker; schooner's halser was a seven inch halser, Globe's an eight inch; schooner was very hard aground; it was half an hour before we succeeded in starting her; the Globe was manned with twenty-eight hands, and she was properly equipped for a voyage to Port Lavaca; the Globe is estimated to be worth from forty to fifty thousand dollars; we had on an average cargo; I have been employed on this coast since last May; the schooner could not have got off without assistance.

The fog was so thick we could not see the schooner until we had passed the Cylinder; saw her signal of distress flying about four o'clock, p. m.; the fog did not clear up much afterwards; the captain of Globe sent no man aboard the schooner; did not lower a boat; received the halser of the schooner and sent our halser, both, by the hands and boat of the schooner; we drew 7½ feet water; the lead gave scant nine; we backed within a half cable's length of the schooner, as far as we could; a pilot came on board the Globe; did not hear him say anything about the depth of water; we were in ten to twelve feet water until the pilot came on board; I heard a pilot tell Capt. Place to come ahead or back

up; captain told him to come aboard; pilot did not tell me to quit sounding, and I kept sounding until we got into the inner channel; the Globe received no injury, crew incurred no great hazard; there was no difficulty; the men of the schooner were in no danger in passing to and from the Globe; when we got schooner off, it was dark; it was eight o'clock when we got the schooner inside to anchorage; the tide was setting in ashore; it was ebb tide; tide was setting down the coast; very near high water; there was from eleven to twelve feet on the main bar; tide kept driving the Globe towards the shore; we were half an hour getting in position to take the halser lent.

M. Hitchcock, sworn: On the 18th of December, in the afternoon, the Globe being at the point of the Island, going out, I saw from our pilot look-out a schooner's masts above the fog outside, with a signal of distress flying; we got the pilot boat under weigh immediately, and four of us went out to where the schooner lay; she was ashore on the north breaker, one third of a mile from the Cylinders; when we arrived the Globe was near to the schooner passing a halser; the chain of the schooner's anchor appeared to have been parted, and chain under her fore foot; the captain of the schooner said he drew ten feet; after steaming some time the schooner's hawser parted and the hawser of the Globe was taken aboard the schooner and made fast; the schooner was got off, thumping heavily.

Capt. Sympton was the pilot who went aboard the Globe; no pilot went aboard the Lucy Ann; I have been a pilot on this coast since 1837; the schooner could not have got off without assistance; there was slack water running, young ebb; the half tide during the night would not have helped the schooner; if there had been no assistance, the schooner would have bilged before next morning; there have been several wrecks upon that breaker; my testimony is based upon experience; no anchor could have held in the quicksands where the schooner lay, unless it had been very heavy; if the schooner had been lightened to eight feet, she might have got over, not without injury however; there was quite a heavy swell; the pilot boat could not have got her off, and no other assistance could have been rendered the schooner that night than the assistance given by the Globe.

I saw the remaining anchor of the schooner; it would not have held in the quicksands where the schooner lay; it does not require a heavy swell to swamp a boat while carrying out an anchor; the schooner lay on the northwest end of the north breaker, in the Cylinder channel; I form my opinion that the schooner would have bilged before next morning, from the way the weather turned out that night and the sea was running next morning; the Globe ran much risk in performing the whole service; she went out of harbor again the same night; I saw the smoke of the Globe as she went out the last time; it gets dark from six to seven o'clock; the Globe was a quarter of a mile off when I saw her smoke; I have known vessels to go to pieces upon those breakers in three or four hours; the schooner is a stout vessel of her kind; the sea was not beating over her; I have no interest in the salvage in

2897.

this case; I told Capt. Place to approach nearer to the schooner, thinking the Globe drew but six feet water; I think now that the steamer would have struck bottom along side the schooner; there was a light breeze at the time; I think an eight inch halser would have towed her off if she had been slued a foot more than she was; the schooner lay in eight feet water; her masts and rigging were uninjured; I remarked to Capt. Place that he could come along side the schooner without danger, but I supposed him to be drawing only 6 feet water.

Captain Sympton, sworn: As soon as Captain Place asked for a pilot, it being my time to board, I prepared to do so. On my way to the Globe Captain Place asked me if there was any danger; I told him there was none; that he could go anywhere around there that he pleased. This answer was given upon the belief that his boat drew but six feet water. After getting on board I found Captain Place very much excited lest his boat should strike the bottom. The halser was by this time made fast; we went ahead, and the halser parted. Captain Place was very much impressed his boat would strike, and had I known she drew seven and a half feet water, I would have feared the same; I thought the Globe drew six feet until I heard the mate swear in court that she drew seven and a half. When we got the other halser fast we went ahead, and after much exertion got the schooner off; she hung from ten to fifteen minutes; by this time it was very dark; I then took the lead, and told Captain Place we would go in over the bar, having the schooner in tow; Captain Place said he would like to take her into safe harbor, but was very much afraid his boat would strike; I was at the lead; we crossed the outer end of the north breaker; the tide was ebb, and it was slack water; I have known several vessels to go on that breaker, and after being there an hour, I never knew one to get off again; our opinion, while we were sailing out towards the schooner at first, was that she would come in, but before we came near to her we changed it; the steamer drawing as much water as I now learn she did, ran much risk in assisting the schooner; it is easier to go out of our harbor than to come in; the Globe went out last time without a pilot, I having given the captain his course and bearings.

I am a pilot of this port; I came to the conclusion that the Globe drew six feet, from having observed her in port, and from the fact of her going to Lavaca; there is but six feet water to Lavaca; I ought to have asked the captain how much water his vessel was drawing; I do not know what cargo she had aboard; I prefer my own opinion about the draught of the Globe to that of the mate; my opinion that the steamer was in danger while rendering the schooner assistance is based upon the supposition that she drew seven and a half feet of water; I never carried the Globe over the bar, except on that occasion; the Globe draws six feet light; I am not much acquainted with steamers; being long and narrow a small cargo would settle her quick; I told the mate quit sounding and assist the crew to get out the halser; I think the 28 men might have managed the halser, without the assistance of the mate; not a man left the deck of the steamer; the schooner was not

injured in rigging or masts; the sea was not running over her; it was a quarter of a mile from the Cylinder to where the schooner lay; it would have taken half her cargo to have beaten her over; if the weather had been calm all the time the schooner could, with the use of anchors, have got off; my opinion was she never could have got over the breaker; we ran close to the schooner in our pilot boat; the average rise of the tide is about two and a half feet; I ran no great risk of my life; the crew of the schooner could have gone ashore in their boats; Captain Place showed great energy and alacrity in assisting the schooner; he showed reluctance to assist or approach close to the schooner until assured by me there was no danger; he did not lower a boat nor send a man aboard the schooner; the schooner's own boat and men carried the halsers to and fro; Captain Place manifested great energy in running about the deck, giving the necessary orders to the pilot and crew; I have seen an eight-inch manilla halser draw a vessel from a quicksand where there was no water; there were places all around there where the Globe would have struck in four feet water; the Globe ran to Port Lavaca; the depth of water to that place is six feet; Captain Place had shown by his position that he would render assistance before we came up; she discharges cargo at Port Lavacca in eight and eleven feet water.

Captain Sympton, X: If the Globe drew six feet water there was no danger; if 7½ there was more danger; there was danger of her falling on the schooner if she had approached her; captain of schooner said he drew 10 feet, but I know from examination that he drew but 9½; the Globe went stern to the schooner and bow to the sea; what tide then was was setting through the Cylinder channel; cargo cast overboard, floated towards Point Bolivar, and grounded on said island; upon reflection, tide set N. N. E., the 5-feet shoal is near the Cylinder; Globe would not steer well going backwards, Captain Place said it was owing to shoal water; there was not a heavy swell, merely a ground-roll, and it was increasing; there would have been no danger to the Globe, as she backed in, if it had not been for the shoal under her lea, upon which there was danger of her falling when she would attempt to back up to the schooner stern on, as she would not mind her helm, but was in danger of falling off head to the shoal; the danger was of her getting on either shoal, one being on each side, one four feet, the other five; the shoals rise bold up and lay in lumps from the seaward.

Captain Hezekiah Wilson, sworn: I am well acquainted with the steamship Globe, and have been pilot on her while running from Galveston to Lavaca; she stopped with me in six feet ten inches water, with 250 barrels of freight aboard; her draught amidships is greater than forward draught by *by* about one foot; she therefore draws one foot more water than her marks indicate; she will, with fuel aboard, and fifteen hundred barrels of freight, draw 7½ to 8 feet; this morning, 3d January, 1849, the Globe has fuel aboard to go to New Orleans, and about 20 barrels of freight, and draws five feet seven inches aft; with 500 barrels of freight and coal to Lavaca (150 bbls.) she would draw six feet ten inches.

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Afterwards, Captains Hitchcock and Sympton being recalled by the court to explain some parts of their testimony, both said that the schooner must have been inevitably lost, together with her cargo, if it had not been for the assistance rendered by the Globe, as no other assistance could have been rendered the schooner that night; they say that the current was setting schooner towards Bolivar point; that the tide would have fallen away faster than they all could have lightened her, and as she was lightened, she would have continued to beat into shoaler water as she had no anchors to hold her; and taking into consideration the state of the weather during the night, and the way the sea was running next morning, the schooner must have gone to pieces; that they could have done the schooner no service with their pilot boat; they say, however, that if the sea had remained as it was, the schooner might have lain there until morning without serious damage; the deepest water in the Cylinder channel over the breaker at ordinary high tide is seven feet; at ordinary low tide, five feet.

Captain Moore, sworn: I am a pilot of this port; was one of those that went down in the pilot boat; I think the schooner would have been lost if it had not been for the assistance of the Globe.

Captain Delesdenier, the fourth pilot that was in the pilot boat when she ran down to the Lucy Ann, swore the same as Captain Moore.

E. P. Hunt, sworn. The captain, mate, and part of the crew of the schooner Lucy Ann made a protest before me, as a notary. The copy of the protest on file is a true one. The ownership of the Globe admitted as charged in the libel; copy of protest annexed was admitted in evidence by the claimants as a part of the libellants' testimony without objection to it, because of not being the original.

Testimony of claimant.

Arthur Spear, master, bound from New Orleans to Galveston.

Warren Gifford, sworn. I was mate of the Lucy Ann; on the 11th of December ultimo, about 2 o'clock, p. m., the wind S. W., I heaving the lead, and there being much fog, we ran from 2½ fathoms water suddenly aground; we put the helm down and backed the sails, but the schooner would not go off; we then got out the boats and carried out our kedge and larboard anchor; the former we dropped in two fathoms, the latter in ten feet; sounded astern and found nine feet; at an oar's length ten feet, we hove on the chain of the anchor; but schooner would not go off. We then threw off the deck load and hove on the chain, but the schooner still stuck fast; we conferred together as to the propriety of throwing over the cargo in the hold of the schooner. By this time it lightened up, and we could see vessels inside, and saw also a steamer coming out; we were now heaving hard on the anchor and kedge. The captain ran up a signal of distress, when the steamer came within hailing distance, her captain asked us if we wanted assistance; our captain answered he did; we took our halser, and so calm was it that with two men I took it aboard the steamer; I then asked for the steamer's halser to add to ours, ours being stranded; but they told us to try ours first.

We were aground about 1½ hour when it lighted up so that we could see the vessels in port. It was 1½ hour afterwards before the steamer came within 120 fathoms of us. In about 1½ hour after we made fast to the steamer we were anchored inside. It was dark when we anchored; the schooner could have got off if the whole cargo had been thrown overboard; schooner did not thump until the steamer got her in tow; then thumped several times heavily. We had not lost either anchor or kedge when the steamer hailed us. We had our best anchor left, but it was not used until we were towed into port. The schooner was not injured by being ashore. I heard some one, whom I supposed to be in the pilot boat, hail the steamer and tell them to back up, there was no danger. We had two boats.

The schooner worked southward and eastward after we struck. If as much more had been thrown out of the hold as we threw off the deck, I believe we could have got off.

The steamer dilly-dallied and kept backing and filling until the pilot went aboard her from the pilot boat. The schooner was lying quiet when we made fast; there was a little roll coming up, but not to signify, when the Globe hailed us; we had not lost anchor or kedge; we afterwards lost an anchor and kedge; we had still the principal anchor left.

The Globe did not lower a boat nor send us a man; they merely passed their halser over their stern into our boat. The Globe had steerage way on her in ten minutes after we were made fast. I have since seen the schooner's bottom, and it is entirely uninjured; the masts, sails, and rigging, were uninjured. The boats of the schooner were towed in astern. We could easily have come ashore in the boats. I examined the draught of the Globe this morning as she lay at the wharf; I went in a boat under her stern to do so; she was drawing five feet one to two inches. So far as the weather goes, the steamer was perfectly safe; but I know nothing about the shoals.

Alder Harrington, sworn. I was a hand on board the Lucy Ann on the 18th of last month; after we struck we put the helm down and tried to back out; we got out an anchor and kedge and tried to heave her off, but could not do so; we then went to lightening her by casting the deck load overboard; we hove nearly all the deck load overboard; heaving all the time upon the chain; when the steamer approached we wanted them to give us their halser; but they said they would try ours first; ours broke; we then took theirs, and after we had made it fast, they towed us off.

I heard some one from the direction of the pilot boat exclaim to the Globe, back up, there is plenty of water; this was before our halser was taken by the Globe. The schooner moved all the time after the halser of the Globe straightened, and went off in about ten minutes.

The schooner was not thumping when the steamer came up; she had been thumping until we threw off the deck load, after that time she kept moving a little. The Globe for some time kept backing and filling until the pilot went aboard her. I did not consider there was

any danger of life at the time; we got into anchorage about 8 o'clock, p. m. The fog was so thick at first that we could not see any thing. It was from 1½ to 2 hours before we could see any thing; the schooner thumped two or three times while in tow. I examined the draught of the Globe this morning along with our mate, she was drawing five feet two inches, this third of January, 1849. The schooner had out an anchor and kedge, the first by a chain, the latter by a cable; we lost both before they hauled us off; we had a chain cable for the remaining anchor. We had not lost either anchor or kedge before the steamer hailed us; we had the anchors out in the direction we had come on.

Edward Shied, sworn. On the 18th December ultimo, about two o'clock, p. m., the weather being thick and foggy, the mate heaving the lead and I upon the look out, the schooner struck; the helm was put up, sails aback, and we tried to back her off; we then lowered a boat, put in halser and kedge, and let the kedge go in two fathom; we then took the long boat out and carried out an anchor, and dropped it in ten feet; we sounded astern the schooner, and found nine feet.

When the steamer approached us, she kept all the time going ahead and backing. They asked us if we had a halser; we said yes, but it was not a good one, that it was stranded; we carried the halser in our boat. I heard the pilot, who afterwards went aboard the steamer, exclaim to the captain of the steamer to back up, that there was a plenty of water and no danger. This was before they took our halser; she then backed up; she had not done so before. There was a little roll at the time coming up. The wind was light just so as to fill the sails. The schooner kept moving to the southward and westward. I was one of the hands aboard the schooner.

Captain Crane, sworn. I have known the Globe ever since she was built; with her coal on board for a trip to Lavaca, 100 barrels of freight would put her down about three inches; two hundred barrels would put her down about five inches; three hundred barrels would put her down about six inches, and so on in that proportion. I am captain of the Galveston; she and the Globe belong to pretty much the same parties. All the freight the Globe had on when she relieved the Lucy Ann she received from the Galveston and from McKinney & Williams' wharf. They had it hauled down there.

Cross examined. I do not know how much the Globe received from the Galveston on that occasion; I suppose the Globe took about as much from the wharf as she did from the Galveston.

Folger, sworn. I am clerk of the Galveston. The Globe received from us, for her voyage to Lavacca, of the 18th of December last, about three hundred barrels of freight. The Globe took in all her freight, on that occasion, at McKinney & Williams' wharf. I do not know what other freight she took beside what she took from the Galveston.

Julius Frederick, sworn. I was wharfinger at McKinney & Williams' wharf, on and about the 18th of December ult. By the aid of my book I am enabled to state that, on the occasion of the Globe's voyage

to Lavacca, on the 18th of December last, she took from McKinney & Williams' wharf only 17 barrels of freight.

Captain Norman Hurd, sworn. I was one of the surveyors appointed to survey the Lucy Ann when she was hove down; we surveyed and inspected her bottom, and we found that she had not sustained the least injury. There was no evidence of any straining; the caulking of her seams was not in the least disturbed, nor was the paint even rubbed off her bottom in any place.

Cross examined. The bottom of a vessel would show an injury from going on a rock, more plainly than one received from going on a sand bar; the bar would not make any bruises.

Captain Joseph Hendly, sworn. The price of towing a vessel in or out of Galveston harbor, is usually from $50 to $75. Cannot say what was a fair compensation for the service rendered by the Globe; she might have been subject to so many contingencies in a service of that nature, as to render it a matter difficult to fix upon.

Captain A. P. Luffkin, sworn. When a vessel was situated as the Lucy Ann was, and relieved, as she was, by the Globe, I consider that, if a bargain had been made at the time, the parties would have considered about $400 a fair remuneration. I do not think the Globe would have gone where she did if there had been any risk. I got aground in the Mississippi river, in a very dangerous situation, where I should have inevitably lost my vessel and cargo if I had not got assistance, and I paid a steamer $100 per hour to come to my assistance. Vessels often strike upon the bar of the Mississippi, and lay until they are dragged over by steamers employed for the purpose. It is always considered towage. The Mississippi bar is a mud bar.

It was proved also that the pilots charged, and were paid by Captain Spear, full pilotage. It was further proved that Captains Sympton, Hitchcock, Moore, and Delesdenier, are all pilots, and all partners as such; and also that Captain Hitchcock went aboard the schooner on the 19th ult., and notified Captain Spear that the Globe claimed salvage.

I hereby certify, in open court, that the foregoing pages contain a true copy of the oral testimony in the case of the Lucy Ann, as agreed to by the respective proctors, and fixed upon by myself.

JOHN C. WATROUS. [L. S.]

Copy of protest annexed to statement of facts.

UNITED STATES OF AMERICA,

State of Texas, city and port of Galveston.

By this public instrument of protest and declaration be it known, and made manifest unto all whom it may concern, that on Tuesday, the nineteenth day of December, eighteen hundred and forty-eight, before me, E. P. Hunt, a notary public, duly commissioned and sworn for the county of Galveston, State of Texas aforesaid, personally came and appeared Arthur Spear, master of the schooner Lucy Ann, of Warren, Maine, of the burthen of one hundred and forty-seven tons, or thereabouts, who made before me, the said notary, a note in entry of protest

in due form. And on this twenty-seventh day of December, same year, again came and appeared before me, the said notary, the said Arthur Spear, master, Warren Clifford, mate, Edward Shred and Charles Smith, seamen, all of the said schooner Lucy Ann, of Warren, Maine, who being by me, the aforesaid notary, solemnly and severally sworn on the holy evangelists of Almighty God, do depose and say, that, on Tuesday, the twelfth day of December instant, they sailed from the port of New Orleans, Louisiana, with an assorted cargo, bound for Galveston, Texas; that they proceeded regularly on the voyage, without any thing occurring worthy of notice, (except that we had continued foggy weather the whole voyage, that utterly precluded the possibility of obtaining an accurate observation that could be depended upon,) until Monday, the eighteenth day of December instant.

These twenty-four hours commenced with light breezes from the S. S. E., and thick weather, standing W. S. W. in seven fathoms water; shoaled the water to five fathoms; then hauled up S. W., and stood on that course about half an hour; saw something on our starboard bow, some two miles distance, which we took to be a vessel; ordered the lead to be thrown, and found we had shoaled our water to three fathoms. Continued throwing the lead, and, after some five or six throws, shoaled our water to half two, when the captain ordered the helm to be put down; but before the vessel could come around, or any thing could be done, she struck on what is known as the north breaker off Galveston bar; tried to back her off, but could not; lowered the small boat, and run the kedge out astern; got out the longboat, and carried out the starboard anchor, hove on the windlass, but could not start the vessel; cut and hove overboard deck load, consisting of whiskey, molasses, onions, apples, crockery, spare spars, spare rigging, stores, fire wood, &c., &c., to lighten the vessel, heaving at the same time at the windlass; parted the chain and hawser. After being ashore some three hours, and having resorted to every means in our power to relieve the vessel, the sea being very rough, and the schooner laboring and straining very much, so much as to cause us to seriously fear for the safety of the vessel, if not immediately relieved from her dangerous position, and having thrown over almost every thing from off deck, we saw the steamer Globe coming out from Galveston, when we set signals of distress, which brought her to our assistance, the pilots arriving soon after. The steamer was brought up within sufficient distance to get a cable to her, and with some difficulty to get [her] off the shoal; and, being without proper ground tackle, the steamer towed the schooner in over the bar at about dark, and brought her to an anchor inside the point for the night.

Tuesday, December 19. Weighed anchor and ran up the harbor, and came alongside the wharf at about eight o'clock, a m., civil time. And the said appearers do further severally declare, that the said schooner Lucy Ann, at the time of her departure from New Orleans, Louisiana, upon her said intended voyage, was tight, staunch, and strong, and had her hatches well and sufficiently caulked and covered, and was well and sufficiently manned, provided, and furnished with all

things necessary upon her said intended voyage, and that they, the said appearers, and ship's company, used their utmost endeavors to preserve the said schooner and cargo from damage and loss.

(Signed) ARTHUR SPEAR,
WARREN CLIFFORD,
EDWARD SHIED,
CHARLES SMITH.

Whereupon the said Arthur Spear did declare and protest, and by these presents doth declare and protest, that all losses, damage, and detriment, which have happened to the said schooner Lucy Ann, or the goods of her lading, are, and of right ought to be, borne by the merchants, freighters, insurers, or whomsoever it doth or may in anywise concern, the same having happened as before mentioned, and not by, or through, the insufficiency of the said vessel, the neglect of the said master, or any of his crew.

This and protested this twenty-seventh day of December, in the year of our Lord one thousand eight hundred and forty-eight, before me, the said notary public.

In testimony whereof I have hereunto set my hand, and affixed my seal of office, the day and year last above written.

[L. S.] E. P. HUNT, *Notary public.*

Arthur Spear, master, Warren Clifford, mate, Edward Shied and Charles Smith, seamen, all of the schooner Lucy Ann, being solemnly sworn on the holy evangelist of Almighty God, do depose and say, that the foregoing instrument of protest hath been clearly and distinctly read to them, the said deponents, and that the matters and things therein contained are true, [and] in all respects the same as therein particularly alleged and set forth.

In testimony whereof, I have hereunto set my hand, and affixed my seal of office, at Galveston, this 27th day of December, A. D. 1848.

[L. S.]

E. P. HUNT, *Notary public.*

UNITED STATES OF AMERICA,
State of Texas, city and port of Galveston.

I, E. P. Hunt, a notary public, duly commissioned and sworn, for the county of Galveston, State of Texas aforesaid, do hereby certify, that the foregoing is a true copy of the original protest, as recorded in my notarial book of records, pages 95, 96, and 97.

In testimony whereof I have hereunto set my hand, and affixed my seal of office, at Galveston, this seventeenth day of January, in the year of our Lord one thousand eight hundred and forty-nine.

[L. S.]

E. P. HUNT, *Notary public.*

And afterwards, to wit, on the 12th day of February, A. D. 1849, the claimant filed the following appeal bond, to wit:

Know all men by these presents, that *we*, Arthur Spear, of the State of Maine, and town of Thomaston, *are* held and firmly bound unto Henry Place, of New York, Charles Morgan, John T. Wright, Henry Morgan, C. Harris, and all others whom it may concern, in the full and just sum of one thousand dollars, to be paid to the said Henry Place, Charles Morgan, John T. Wright, Henry Morgan, C. Harris, and all others whom it may concern, certain attorney, executor, administrator, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 10th day of February, in the year of our Lord one thousand eight hundred and forty-nine.

Whereas lately, at a term of the district court of the United States for the district of Texas, in a cause in admiralty depending in said court between the said Henry Place, libellant, for himself, and for Charles Morgan, John T. Wright, Henry Morgan, and C. Harris, owners of the steamship Globe, as well as for the crews of said steamship, and Arthur Spear, claimant, on the 30th day of January, A. D. 1849, a decree was rendered against the said Arthur Spear; and the said Arthur Spear having obtained an appeal, now granted and on record in the said court, at the same term thereof, to reverse the decree in the aforesaid cause; and the said Henry Place having due notice of the said appeal, as appears by the record of the said court, and being thereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such, that if the said Arthur Spear shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his claim good, then the above obligation to be void; else to remain in full force and virtue.

A. SPEAR, [SEAL.]
C. W. ADAMS, [SEAL.]
JAMES N. HAMILTON. [SEAL.]

Sealed and delivered in presence of—
J. HIGHLANDS.

Approved by— JOHN C. WATROUS,
U. S. Judge, dist. Texas.

UNITED STATES DISTRICT COURT, *district of Texas.*

I, James Love, clerk of the United States district court, district of Texas, certify that the foregoing, numbered from 1 to 38, inclusive, contain a true and complete transcript of the record, and all the proceedings had in the cause in admiralty lately determined in our said court, wherein Henry Place et al. are libellants, vs. the Schooner Lucy Ann and Cargo.

In testimony whereof I have hereunto subscribed my name as clerk aforesaid, and caused the seal of office to be affixed, on the third day of September, one thousand eight hundred and forty-nine.

JAMES LOVE, *Clerk*. [SEAL.]